91-11

Supreme Court, U.S.
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No._____

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1991

ALISON KING,
Petitioner
v.
PRUDENTIAL-BACHE SECURITIES, INC., *et al.*,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA AND CALIFORNIA COURT OF APPEAL, FIRST DISTRICT, DIVISION FOUR

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QUESTIONS PRESENTED

1. Whether a state court acted contrary to the United States Constitution when it elevated the illicit interests of perpetrators of fraud to prevail over the rights of their victim particularly when such fraud was later perfected by the same defrauders through additional fraud upon the state court and when abundant objective evidence on record proved such frauds?

2. Whether California court acted contrary to the United States Constitution and the Federal Arbitration Act, by deciding that an arbitration clause, contained in a bogus document procured by fraud and not intended to be valid and enforceable, limiting its scope to "any claim or controversy arising out of" said document, may nonetheless be enforced by the defrauders against their victim and furthermore be drastically expanded in scope as desired by the defrauders so as to apply to any other entirely separate and different, non-arbitrable contract sued on by the victim?

3. May a state court deny Plaintiff-Petitioner, a minority and female, her diligently asserted federal Constitutional rights to trial by jury, due process and equal protection of the laws, through contrary and non-uniform application of law that directly conflicts with the applicable precedent and prior decisions of the U.S. Supreme Court, and through misstatement and omission of important facts and issues essential to a just decision?

LIST OF PARTIES

The parties to the proceeding below were the Petitioner, Alison King, and the Respondents, Prudential-Bache Securities, Inc., Carrington Clark, Jr., and Eugene Stansbery.

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The Petitioner, Alison King, respectfully prays that a writ of certiorari issue to review (a) the judgment of the Supreme Court of California, entered in the above entitled proceeding on March 28, 1991, denying her Petition for Review, and (b) the judgment and opinion of the California Court of Appeal, First District, Division Four, on which said Petition for Review was brought but denied by the California Supreme Court.

OPINIONS BELOW

The judgment of the Supreme Court of California, entered in the above entitled proceeding on March 28, 1991, denying Petitioner's Petition for Review is reprinted in the APPENDIX hereto, p.1a, *infra*.

The judgment of the California Court of Appeal, First District, Division Four, entered in the above entitled proceeding on January 10, 1991, denying Petitioner's Petition for Rehearing is reprinted in the APPENDIX hereto, p.2a, *infra*.

The judgment and opinion of the California Court of Appeal, First District, Division Four, entered in the above entitled proceeding on December 11, 1990, is reprinted in the APPENDIX hereto, p.3a, *infra*.

JURISDICTION

This Petition for Writ of Certiorari was timely filed by mailing via U.S. Postal Service on March 26, 1991. The jurisdiction of this Court to review the judgment of the California Supreme Court and the California Court of Appeal is invoked under 28 U.S.C. 1257(3).

STATEMENT OF THE CASE

INTRODUCTION

In this case, Petitioner Alison KING ("KING"), a female minority and a victim of fraud, in justified reliance upon the protection of the United States Constitution and upon applicable precedent and prior decisions of the U.S. Supreme Court and those of the courts of the State of California, sought justice and redress in California courts. She was instead penalized and deprived of her diligently asserted federal Constitutional rights to jury trial, to due process and to equal protection of the laws, while the perpetrators of fraud were rewarded with summary ratification by the California courts of their frauds and a

drastic expansion of the scope of their fraudulent interests. There was a gross miscarriage of justice.

This petition seeks to secure Petitioner's federal Constitutional rights to jury trial, due process and equal protection, and to resolve the actions of the California court which evaded vindication of her said federal rights, acted contrary to the controlling precedent and applicable decisions of the U.S. Supreme Court and refused to follow applicable and controlling California precedents in Petitioner's favor. Justice and legal precedents require that a victim of fraud be relieved of such fraud and that the defrauders not be rewarded, as a matter of policy. The California court acted contrary to these honored principles and precedents.

The California court rationalized its denial of Petitioner's federal Constitutional rights through factual distortions that were conclusively refuted and disproved by the objective evidence docketed and on record below. This factual falsehood will nonetheless be certified by California court for public publication, thereby misleading future readers as to what the truth and facts were and what actually happened.

Where a lower court's decision is so totally devoid of evidentiary support and in fact conclusively refuted and disproved by the evidence on record, the decision is rendered unConstitutional under the federal Due Process Clause of the Fourteenth Amendment. The public's interest in and reliance on the truthfulness and righteousness of lower courts and in the latter's protection of federal rights, and their uniform and even-

handed application of precedents, particularly the applicable precedent and prior decisions of the U.S. Supreme Court, will be irreparably undermined and damaged if the shockingly unjust decisions and results of the California court in this case are allowed to stand and recur, and to become an example of permissible conduct for other courts.

This petition also seeks to settle an important question of law. Namely, whether lower courts may Constitutionally compel a victim of fraud such as the Petitioner, to arbitrate her suit on a contract not providing for arbitration, by unilaterally borrowing and enlarging the self-limiting scope of an arbitration clause found in an entirely separate and different document that was (a) fraudulently procured by Defendants and (b) never intended by the parties to be valid or enforceable even as to that document.

Finally, this petition seeks to determine whether a discriminatory judicial decision that denies a plaintiff her diligently asserted federal Constitutional rights, in the manner of contrary and non-uniform application of law via an opinion that misstated and omitted facts and issues essential to a just decision, is Constitutionally permissible.

The federal issues of jury trial, due process and equal protection also independently arose in this case from the unanticipated ruling of the California court, which refused to follow the applicable precedent and controlling decisions of this Court and which also sharply departed from the precedents of California law.

The Constitutional questions and issues raised here are of crucial fundamental importance with far-reaching impact and, unless fully reviewed by this Court, will seriously jeopardize the aura and quality of justice in America as well as the rights of all similarly aggrieved litigants now and in the future.

FACTS

On July 20 1984, Defendants/Respondents ("PRUDENTIAL" et al.) contemporaneously entered into employment contracts (hereinafter "July contracts") with Plaintiff/Petitioner, Alison KING ("KING") and her co-worker Wallace LIN ("LIN") [Clerk's Transcript on Appeal (hereinafter "C.T.", on file and docketed in the California Court of Appeal, First Appellate District, Division Four) 250-253], both of whom were then employed at Merrill Lynch ("MERRILL"), a competitor to PRUDENTIAL. The terms of the LIN and KING's July contracts contained a confidentiality clause at the insistence of PRUDENTIAL but no arbitration clause [C.T. 251:para.10; 253:para.10.]

On August 20 1984, purporting to fear MERRILL's suit for "broker raiding", PRUDENTIAL demanded that both KING and LIN each sign a host of forms including a dummy "Employment Agreement" (hereinafter "August document") [C.T. 213-219; 235-238] purportedly to preserve the confidentiality of the July contracts. Under PRUDENTIAL's repeated reassurances that signing said forms would not in any way compromise their confidential July contracts which remained fully valid and binding, KING and LIN each signed, with the

understanding that these papers were legal nullities, involving no mutual assent or consideration as to their contents, and did not constitute an agreement to anything [C.T. 172:2-36; 173:1-4; 351-352; 675:6-28; 676:1-11.]

Thereafter, PRUDENTIAL did faithfully follow its confidential July contract with LIN, as expected [C.T. 676:13-19; 678:8-28; 679.] The conduct of PRUDENTIAL unequivocally proved the sole validity of the July contract and the prior understanding of the parties in that regard.

In contrast to their dealings with LIN, PRUDENTIAL decided to discriminate against KING, a female and minority. Fabricating that MERRILL had refused to transfer KING's license, PRUDENTIAL had KING take a leave until her license was transferred, while assuring her that they were as anxious to perform her July contract as they were performing LIN's [C.T. 173:5-18; 209-210; 676:21-27; 677; 678:1-6.]

Several months later, upon discovering PRUDENTIAL's deceit [C.T. 173], KING sued for wrongful termination on her July contract [C.T. 19-31.] PRUDENTIAL then submitted to court perjured declaration that the August documents were valid and the July contracts were not [C.T. 315:10-19.] It is undisputed that the August documents were never followed in any way whatsoever by any party, precisely because they were in fact bogus and invalid. This fact and PRUDENTIAL's performance of and adherence to the July contract, as mirrored in the identical situation of LIN [C.T. 676:13-19; 678:8-28; 679],

exposed and proved PRUDENTIAL's bad faith, perjury, misrepresentation and fraud upon the court.

Aside from their invalidity for fraud, the bogus August documents were also void for the additional reason of improper execution. On August 20, 1984, PRUDENTIAL so rushed KING and LIN to sign the host of forms without reading that their signatures on the August documents actually fell at the wrong places under wrong capacities and titles as to render the documents legally invalid [C.T. 217; 238.] This fact also provided proof that PRUDENTIAL denied both KING and LIN the opportunity to review the papers they were told to sign but simply hurried their signatures.

The additional discrepancy in KING's August document, reciting the fiction of a promissory note and payment of $85,983.00 to KING when in fact KING never received any such money [C.T. 209-210; 215; 218-219], provided yet another independent and conclusive proof of its bogus and sham nature, and yet another proof of PRUDENTIAL's fraud upon KING and upon the court in falsely declaring the August document to be true [C.T. 315:10-22.]

PRUDENTIAL's perjured declarations to the court showed that it placed top value on arbitration before the New York Stock Exchange ("NYSE") in which PRUDENTIAL is a prominent pillar, and would use any means and expedients to achieve the goal. In using the bogus August document to compel KING to arbitrate her suit on the July contract, PRUDENTIAL proved by conduct that their fraud and misrepresentation on August

20, 1984 were premeditated and directed at the arbitration clause.

Nonetheless, without any trial or evidentiary hearing on the preliminary issue of fraud, as required under law and legal precedent, the California Superior Court ordered KING to arbitrate before the NYSE her suit on the non-arbitrable July contract [C.T. 336-337]. After the California Court of Appeal, Hon. Carl W. Anderson presiding, denied KING's petition for review of said erroneous order [C.T. 517], the compelled arbitration took place under protest in San Francisco. An award of dismissal resulted, with costs taxed to PRUDENTIAL [C.T. 468.]

KING, acting *pro se*, then petitioned the California court for correction and confirmation of said arbitration award [C.T. 454; 456-461.] and alternatively to vacate the award [C.T. 577-588], on grounds that the arbitrators were specifically required to decide on the preliminary issue of arbitrability on which KING requested a special verdict. The award of dismissal and the taxing of PRUDENTIAL either reasonably expressed a decision of non-arbitrability and in KING's favor and the award should so reflect, or else constituted arbitral misconduct for failure to render requested special verdicts and therefore subject to vacation, (California Code of Civil Procedure ("CCP") 1283.4, 1286.2, 1286.6). PRUDENTIAL opposed and requested for confirmation of award as is.

After a series of responsive pleadings and supporting documentation was filed by both parties [C.T. 471- 647], KING retained legal counsel [C.T. 648.] Despite

compelling law and facts in KING's favor [C.T. 651-815], an order was issued and judgment filed confirming arbitration award as is [C.T. 829-832.] Because the lower court deprived KING, *ab initio*, of her federal Constitutional right to jury trial, or at a minimum, a full evidentiary hearing on the preliminary issue of fraud as this Court's decision in *Moseley v. Electronics Facilities*, 374 U.S. 167 ("*Moseley*"), as well as the *Federal Arbitration Act* and due process would require, KING appealed to the California Court of Appeal for such relief.

On December 11, 1990, the California Court of Appeal, the same Hon. Carl W. Anderson presiding, denied KING relief and affirmed [See reprinted California Court of Appeal opinion ("Opn.") in APPENDIX, p.3a] KING's subsequent Petition for Rehearing was also denied on January 10, 1991 [See APPENDIX, p.2a, *infra*]. Thereafter, KING timely filed her Petition for Review with the California Supreme Court. On March 28, 1991, the California Supreme Court denied her petition without elaboration, although Justice Mosk of the California Supreme Court registered his dissent and was of the opinion that King's Petition for Review should be granted [See APPENDIX, p.1a, *infra*]. This Petition for Writ of Certiorari follows.

Throughout the course of litigation, Respondents endeavored to reiterate the frequency of affirmation of prior erroneous and unjust rulings in the case as a substitute for merit. Respondents' vigorous opposition to any trial on the issue of fraud, which has yet to take place, is consistent with their keen awareness of their

frauds and their fear that a trial or an impartial scrutiny on the merits by a higher court would exhume a gross injustice that has thus far remained buried to their benefit.

REASONS FOR GRANTING THE WRIT

THE ILLICIT INTERESTS OF PERPETRATORS OF FRAUD MUST NOT BE ELEVATED TO UNCONSTITUTIONALLY PREVAIL OVER THE RIGHTS OF THEIR VICTIM PARTICULARLY WHEN SUCH FRAUD WAS LATER PERFECTED THROUGH ADDITIONAL FRAUD UPON THE COURT AND ABUNDANT OBJECTIVE EVIDENCE ON RECORD PROVED SUCH FRAUDS.

PRUDENTIAL's successful fraud upon Petitioner KING, and later upon the court during litigation should not have been condoned and utilized by the California court to further deny KING her diligently asserted federal Constitutional right to jury trial on her non-arbitrable July contract. To erroneously compel KING to arbitrate and to uphold such arbitration, aggravated KING's Constitutional injury and correspondingly further rewarded her defrauders. This pattern of judicial decision was also directly contrary to law, including the holding of the U.S. Supreme Court in *Moseley v. Electronics Facilities*, 374 U.S. 167 ("*Moseley*"), and the Federal Arbitration Act, 9 USC 2, and California Code of Civil Procedure ("CCP"), Section1281, which provide for relief from arbitration for fraud, in addition to numerous applicable California case law decisions.

In its opinion of December 11, 1990 ("*Opn*", reprinted in APPENDIX, p. 3a, *infra*), the California Court of Appeal cited several important and controlling California cases

all of which uphold KING's right to jury trial on her suit: *Strotz v. Dean Witter Reynolds Inc.* (1990) 223 Cal.App.3d 208 ("*Strotz*"); *Ford v. Shearson Lehman American Express, Inc.* (1986) 180 Cal.App.3d 1011 ("*Ford*"); *Main v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1977), 67 Cal.App.3d 19 ("*Main*"); *Ericksen, Arbuthnot, McCarthy, Kearney & Walsh Inc. v. 100 Oak Street* (1983) 35 Cal.3d 312 ("*Ericksen*"). The California Court of Appeal refused to follow these precedents and justified denial of relief to KING with erroneous reasoning based on factual distortions that were refuted and disproved by the abundant objective and compelling evidence on record.

For example, in inducing KING to sign the August document, PRUDENTIAL acted exactly as did the defendant in *Strotz*. As in *Strotz*, PRUDENTIAL deceived KING as to the nature and effect of the documents she was pressured to sign and falsely reassured KING that said documents would not affect her legal rights under the July contract. PRUDENTIAL's perjury in court by misrepresenting the validity of these documents revealed their fraud in the inception, factum and execution of said documents. Even though KING's case was even more compelling than *Strotz* in that the July contract she sued on had no arbitration provision, she was denied a jury trial.

Like the plaintiff in *Ford*, KING's declaration showed that, regardless of the existence or absence of an arbitration clause, she would have refused to sign on August 20, 1984 had she known that the Respondents' representations that the documents would not in any way compromise her preexisting rights was in fact false. As in

Ford, KING did not and had no reason to bargain for the August papers, much less the terms therein, after Respondents' aforesaid representations. Still, the California courts denied KING a jury trial on her non-arbitrable July contract.

Because Respondents sought to enforce documents that were in fact a legal nullity, fraud permeated the entirety of every document including all the terms therein as in *Main, supra,* thereby precluding enforcement. The conduct of the Respondents showed that they never intended the August documents to be valid and indeed were in gross violation of each and every term therein if it were valid. Even if KING were suing on the August document, which she patently was not, PRUDENTIAL's fraud so permeated the entire August document and was so directed at the arbitration clause, as to require court trial under *Ericksen, supra*. KING's right to jury trial, based on the non-arbitrable July contract, far exceeded the requirements under both *Main* and *Ericksen* but this important federal Constitutional right was still denied her by the courts below.

The California Court of Appeal justified PRUDENTIAL's conduct by alleging that KING was an experienced broker as if that were sufficient excuse for PRUDENTIAL's fraud and the courts' denial of protection [Opn, p.10a, *infra*], without considering that in an employer-employee relationship PRUDENTIAL possessed far superior experience, knowledge and unequal bargaining power and coercive influence over KING. This disparity in power was in fact exerted by PRUDENTIAL to successfully deceive and rush KING

into signing the bogus August documents while misrepresenting their true character, as proven by PRUDENTIAL's subsequent conduct and the evidence on record, and in breach of the implied covenant of good faith and fair dealing found in every contract.

The California Court of Appeal ignored *Moseley v. Electronics Facilities*, 374 U.S. 167 ("*Moseley*"), the glaring objective evidence on record proving Respondents' fraud [C.T. 651-815] and controlling California precedents such as *Strotz, Ford, Main* and *Ericksen* to reaffirm prior erroneous rulings and decisions against KING. Erroneous prior decisions in this case, however many times repeatedly rationalized and affirmed, do not thereby become correct or just. The California Court of Appeal has therefore set a dangerous precedent that rewards perpetrators of fraud for their unlawful and tortious conduct, while further trampling the federal Constitutional and legal rights of the victim and denying her relief.

The California Supreme Court's refusal to grant petition for review despite knowledge of its lower court's failure to honor federal Constitutional rights and U.S. Supreme Court and other California precedents was quite unexpected. In effect, its surprise refusal to supervise its lower courts in regards to federal Constitutional rights and to ensure even-handed and uniform application of controlling law gravely undercut the authority of the U.S. Constitution and of this Court and sanctioned the continued deprivation of Petitioner KING's federal jury trial, due process and equal protection rights enjoyed by other citizens.

THE CALIFORNIA COURT ACTED CONTRARY TO THE UNITED STATES CONSTITUTION AND THE FEDERAL ARBITRATION ACT BY DECIDING THAT AN ARBITRATION CLAUSE CONTAINED IN A BOGUS DOCUMENT PROCURED BY FRAUD AND NOT INTENDED TO BE VALID AND ENFORCEABLE, LIMITING ITS SCOPE TO "ANY CLAIM OR CONTROVERSY ARISING OUT OF" SAID DOCUMENT, MAY NONETHELESS BE ENFORCED BY THE DEFRAUDERS AGAINST THEIR VICTIM AND FURTHERMORE MAY BE DRASTICALLY EXPANDED IN SCOPE AS DESIRED BY THE DEFRAUDERS SO AS TO APPLY TO ANY OTHER ENTIRELY SEPARATE AND DIFFERENT, NON-ARBITRABLE CONTRACT SUED ON BY THE VICTIM.

It is a matter of record that the confidential July contract sued on by KING [C.T. 174-175] contained no arbitration clause whatsoever. Thus when KING filed suit against Respondents for breach of said July contract, there was no basis for California court to order arbitration of her suit, much less before a panel selected by the very private organization (New York Stock Exchange) [C.T. 351:22-28; 352; 375:para.5; 371] in which PRUDENTIAL was a prominent and influential member.

It is particularly noteworthy that although KING sued on her July contract which was non-arbitrable, the California court compelled KING to arbitrate based on an arbitration clause existing elsewhere in the fraudulently induced August documents which were not the subject matter of her suit. Even the purported arbitration clause in the bogus August document, upon which the California Court of Appeal relied, expressly limited its scope to "any claim or controversy arising out of" the terms of said

document, and thus would not apply to the totally different July contract sued on.

The California court nonetheless dramatically enlarged the scope of a self-limiting arbitration clause in the bogus August document to encompass the entirely separate and different July contract. This astounding and unwarranted expansion of the illicit interests of defrauders at the expense of their victim is erroneous, unConstitutional and unprecedented and went directly against the federal Constitution and the teaching of this Court in *Moseley v. Electronics Facilities*, 374 U.S. 167 ("*Moseley*").

In effect, the California court's decision invalidates the practical significance of federal Constitutional rights, of this Court's decision in *Moseley*, and of the Federal Arbitration Act which provides that arbitration may not be ordered where, as here, parties have not agreed to arbitrate and where grounds in law or equity such as fraud would render arbitration unjust.

Any purported jurisdiction of arbitrators based on fraudulently procured documents was null and void, and defective. Such jurisdictional defect is fundamental, never waived, was raised before, and may again be raised anytime, any place, so long as the defect remains.

THE CALIFORNIA COURT OF APPEAL, BY ITS CONTRARY AND NON-UNIFORM APPLICATION OF LAW IN AN OPINION THAT MISSTATED AND OMITTED ISSUES OR FACTS ESSENTIAL TO A JUST DECISION, AND THE CALIFORNIA SUPREME COURT BY ITS ACQUIESCENCE, DISCRIMINATED AGAINST PLAINTIFF, A FEMALE MINORITY AND VIOLATED HER FEDERAL

CONSTITUTIONAL RIGHTS TO JURY TRIAL, DUE PROCESS AND EQUAL PROTECTION.

Despite the foregoing case law overwhelmingly on KING's side and the glaring objective facts proving fraud, the California Court of Appeal seized on the label of "Employment Agreement" found in the bogus August document [Opn. p.10a, *infra*] Illogically, the California Court of Appeal faulted KING for not having argued with PRUDENTIAL over the content of the bogus August document, even though there was absolutely no reason to expect KING to do so when the papers were understood by the parties to be null and void, and as PRUDENTIAL hurried her signature.

Ignoring the refuting evidence on record and the reliable proof by conduct in PRUDENTIAL's performance of the July contract, mirror-imaged in the identical circumstances of LIN, the California Court of Appeal falsely portrayed KING to have signed the August document "under the mistaken belief that it merely repeated the terms earlier agreed." [Opn. p.10a, *infra*], as if the use of such disproved and refuted factual distortions could ever be a rationale for sanitizing and rewarding PRUDENTIAL's flagrant fraud and deceit and for further denying relief to an aggrieved victim of fraud such as KING.

Resting on disproved and refuted tangential factual embellishments and ignoring the contrary evidence and proof on record and the important underlying legal principles and logic of precedents that support KING, the California Appellate Court falsely concluded that

KING's case was more similar to *Feil* (*Herman Feil, Inc. v. Design Center of Los Angeles (1988),* 204 Cal.App.3d 1406) than to *Main*, *Ford* and *Strotz* [Opn. p.10a, *infra*]

The California Court of Appeal's reliance on *Feil* as on point was peculiar and false, both factually and legally. In *Feil*, a case involving a commercial lease, the landlord did not actively mislead and misrepresent to the tenant that the contract had no legally binding effect, nor was there a validly executed prior contract between the parties which the landlord followed in dealing with other tenants. Unlike in *Feil*, the California Court of Appeal not only validated the self-limiting arbitration clause contained in the bogus August document, but further dramatically and unConstitutionally expanded its scope to the entirely different and separate July contract sued on in which there was absolutely no agreement to arbitrate.

The glaring evidence on record proved that KING's case is squarely in the league of *Moseley, Main, Ford* and *Strotz*, with one difference, i.e., KING's case is even more compelling, as none of the cited cases (e.g. *Feil, Ericksen*) purporting to justify denial of KING's Constitutional right to a trial by jury had a second contract, validly executed, non-arbitrable, and the only subject matter of KING's suit.

Throughout the course of suit, KING had persistently refused to waive her federal Constitutional rights to a trial by jury, due process and equal protection, despite compulsion by the California court. Her attorney's request that the arbitrators "rule on the arbitrability of each of her claims and upon their authority to order each

item of relief requested" reflected her insistence on her federal Constitutional right to jury trial, that her claims were not arbitrable and that the preliminary issue of arbitrability and of jurisdiction was never properly decided as federal Constitutional due process would have required.

As shown above, there was no independent or adequate nonfederal ground for the California court's decision against KING, as all applicable prior California cases are contra. Since the state ground is non-existent to support the state judgment in light of contrary holdings of prior state decisions, the California judgment necessarily operates as a denial of federal Constitutional rights diligently asserted and repeatedly raised by Petitioner KING.

Because California courts would afford other plaintiffs, as it clearly did in prior decided cases such as *Ford*, protection against fraud, but not Petitioner KING, the unequal treatment of Petitioner and the California Supreme Court's refusal to deal with said unequal treatment and non-uniform application of federal and California law serve to evade KING's important federal Constitutional claims and rights.

The California Supreme Court's refusal to grant review in effect sanctioned the unequal and discriminatory treatment of Petitioner KING and the violation of KING's federal Constitutional rights. Such refusal to grant review under the compelling circumstances, and for no apparent reason or justification other than the fact that KING, as a female minority, is to be accorded

substantially less rights and protection than others, independently raised important federal Constitutional issues of due process and equal protection. *Burns v. Ohio*, 360 U.S. 252 (1959).

In effect, the California Court of Appeal's opinion and the California Supreme Court's denial of review encourage PRUDENTIAL, or any other premeditated defrauder, by virtue of its initial successful perpetration of fraud and deceit, and despite the absence of mutual assent or consideration, to legally deprive a trusting victim not only the benefit of her bargain in a preexisting valid contract but also her Constitutional rights to trial by jury, due process and equal protection. Although the U.S. Supreme Court decision in *Moseley, supra*, and prior controlling California decisions in *Strotz, Ford, Main* and *Ericksen,* would never have permitted such egregiously unjust results, Petitioner KING, a female minority, was treated by California court differently and discriminatorily. Such is not justice. The violation of KING's federal Constitutional rights to trial by jury and to due process, equal protection and equal justice under law continues.

CONCLUSION

Justice delayed is justice denied. The interest of justice requires that, however belated and already to her detriment, Plaintiff/Petitioner ALISON KING must be accorded her diligently asserted federal Constitutional rights, including a jury trial of all her claims, and at a minimum a jury trial on the preliminary issue of fraud.

While Petitioner KING does not expect the California courts to be perfect, the California courts' deliberate refusal to honor KING's diligently asserted federal Constitutional rights and to follow applicable precedent and controlling decisions of this Court as in *Moseley, supra,* and their selective and deliberately non-uniform application of California law and precedents raised extremely important and troubling fundamental issues of Constitutional ramifications that must be addressed if the notion of equal justice under law is to be meaningful in practice.

This is truly a case where the U.S. Supreme Court's power of supervision should be exercised because of the lower courts' deliberate departure from the U.S. Constitution and the accepted and usual course of legal proceedings and controlling precedents. Petition should be granted.

Respectfully submitted,

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APPENDIX

SUPREME COURT
FILED
MARCH 28, 1991
Robert Wandruff Clerk

Deputy

First Appellate District, Division Four, No. A046523
S019245

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA
IN BANK

ALISON KING, Appellant
v.
PRUDENTIAL-BACHE SECURITIES INC. Et Al.,
Respondents

Appellant's petition for review DENIED.
Mosk, J. is of the opinion the petition should be granted.

LUCAS
Chief Justice

FILED JAN 10, 1991, Court of Appeal, First App. Dist
by Ron D. Darrow, Deputy

CALIFORNIA COURT OF APPEAL
FIRST APPELLATE DISTRICT
DIVISION FOUR

ALISON KING
v.
PRUDENTIAL-BACHE SECURITIES, INC. et al.

A046523
San Francisco County Sup. Ct. No. 844577

BY THE COURT:

The petition for rehearing is denied.

This court's December 11, 1990 opinion for the appeal herein has now been certified for publication pursuant to rule 976 of the California Rules of Court and it is therefore ordered that said opinion be published in the Official Reports.

Dated: JAN 10, 1991
ANDERSON, P.J.

NOT TO BE PUBLISHED
IN OFFICIAL REPORTS
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT
DIVISION FOUR

A046523
(Super. Ct. No. 844577
San Francisco county)

ALISON KING,
Plaintiff and Appellant,
v.
PRUDENTIAL-BACHE SECURITIES, INC., et al.,
Defendants and Respondents.

Plaintiff and appellant Alison King (appellant) appeals from an order and judgment granting the petition of defendants and respondents Prudential-Bache Securities, Inc., Eugene Stansbery, and Carrington Clark, Jr. (respondents), to confirm an arbitration award. Appellant contends: (1) The question of whether the contract containing an arbitration clause was induced by fraud should have been decided by the superior court and not submitted to the arbitrator; and (2) the arbitration agreement should not have been enforced because fraud permeated the entire contract including the arbitration clause. We affirm.

I. STATEMENT OF FACTS AND PROCEEDINGS

On December 4, 1985, appellant filed a complaint for wrongful termination and related causes of action against respondents and her former employer, Merrill Lynch, Pierce, Fenner & Smith, Inc.

On January 24, 1986, respondents filed a petition for an order compelling arbitration and staying proceedings. The petition alleged that in conjunction with her employment by

respondents, appellant executed an "Employment Agreement' and a 'Uniform Application for Securities Registration' on August 20, 1984. Both documents contained arbitration clauses.

Appellant opposed the petition on the ground that she was fraudulently induced to execute the agreements. In a declaration, she averred as follows. Respondents attempted to recruit her as a security broker/account executive while she was employed by Merrill Lynch. On July 20, 1984, she signed a written confidential employment agreement with respondents which did not contain an arbitration clause. On August 15, 1984, appellant was terminated from Merrill Lynch.

On August 20, 1984, respondents told her to sign 'a host of forms' so that her employment could immediately commence. 'Because of the rush it was not possible for [appellant] to thoroughly examine the contents of the documents.' She noticed that one document was entitled 'Employment Agreement' and she asked about the purpose of signing another such agreement.

She was assured that 'this was routine and that signing it would in no way compromise [her] rights under [her] July 20, 1984, contract, which would remain valid and binding. [She was] told that signing the 'Employment Agreement' would facilitate and protect the confidentiality of [her] real employment agreement as set forth in the letter of July 20, 1984. [She was] also reminded that Paragraph 10 of the July 20, 1984, confidential employment contract expressly required that [she] cooperate in maintaining its secrecy. In reliance upon [respondents'] representations that it would not be relied upon as having any legally binding effect, and under pressure to be cooperative, [she] signed the August 20, 1984, dummy 'Employment Agreement." A declaration of respondent Stansbery contradicted the version of the facts set out by appellant and basically stated that all parties agreed that the August 20 contract was the legally binding agreement.

Paragraph 7 of the August 20 'Employment Agreement' is entitled 'Remedies.' In the same large typeset used in the rest of the agreement, it states: 'Any claim or controversy arising out of this Agreement, the interpretation thereof, shall be settled by arbitration under the then prevailing Constitution and Rules of the New York Stock Exchange, Inc. Judgment based upon the

decision of the arbitrators may be entered in any court having jurisdiction thereof.' Respondents never allowed appellant to commence her employment.

An order by Judge Maxine M. Chesney filed on April 8, 1986, declared: "The Court having read and considered the papers in support of and in opposition to the Motion, and the matter having been argued and submitted, and good cause appearing therefor, [¶] IT IS HEREBY ORDERED that [respondents'] Petition to Compel Arbitration of this case in accordance with the Arbitration Rules of the New York Stock Exchange at San Francisco, California, and to Stay Proceedings Pending Arbitration are granted."

On August 27, 1986, appellant filed a motion to dissolve or modify the stay of proceedings, based on the same allegations of fraud as stated above. On October 22, 1986, Judge Chesney denied such motion after 'having read and considered the papers filed in support of and in opposition to the Motion., On December 17, 1986, in King v. Superior Court, A036760, this court denied appellant's petition for a writ of certiorari and/or prohibition challenging the order compelling arbitration.

We were not supplied with a complete record of the arbitration proceeding. However, the appellate record does contain some items from the arbitration. On May 8, 1987, appellant's then attorney presented her claim to the arbitrators in a letter which included the following: "King further requests that the arbitrators rule on the arbitrability of each of her claims and upon their authority to order each item of relief requested above." At page 545 of the reporter's transcript of the arbitration, dated October 20, 1988, the chairperson of the panel of arbitrators asked if appellant "had a fair and full opportunity to present [her] case" and if she and her attorney were satisfied that they had done so. The attorney replied, 'I believe we have . . . . Yes. We have, I believe, presented the evidence that we reasonably have available to us."

A decision by a majority of the panel of arbitrators, dated October 20, 1988, declares that the arbitrators "having heard and considered the proofs of the parties, have decided and determined that in full and final settlement of the above matter, the claims of

the claimant are hereby dismissed in all respects.' Costs in the amount of $4,500 were assessed against respondent Prudential-Bache Securities, Inc.

On January 27, 1989, appellant, acting pro se, filed a petition to correct and confirm the arbitration award. She argued that the arbitrators ruled that her 'claims were not arbitrable and, instead of granting or denying them, must therefore be dismissed." Appellant requested that the award be corrected to state that the claims were not subject to arbitration. On February 15, 1989, respondents filed a petition pursuant to Code of Civil Procedure section 1285 for confirmation of the arbitration award and for a judgment thereon.

After appellant retained her present attorney, declarations repeating the above stated allegations of fraud in the inducement were filed on her behalf. Judge Stuart R. Pollack granted judgment to respondents by an order which includes the following: "The court having read and considered the papers in support of and in opposition to the Petitions ...[¶] The Court further finds and determines that [appellant's] claims of fraud in the inducement were previously rejected by the Honorable Maxine Mackler Chesney...[¶] The Court further finds and determines that even if [appellant's] fraud in the inducement argument had not already been decided by a judge of this court, there is no credible evidence of fraud in the inducement of the arbitration clause contained in the Agreement executed by [appellant]."

II. FRAUD IN INDUCEMENT ISSUE

Appellant contends that the question of whether the contract containing an arbitration clause was induced by fraud should have been decided by the superior court and not submitted to the arbitrator. This contention lacks merit.

In Ericksen, Arbuthnot, McCarthy, Kearney & Walsh Inc. v. 100 Oak Street (1983) 35 Cal.3d 312, 323 (Erickson), the Supreme Court held that claims of fraud in the inducement of-a contract containing an arbitration clause -- as distinguished from claims of fraud directed to the arbitration clause itself -- are to be decided by the arbitrator and not by a court.

The rule of Ericksen, supra, was applied in Herman Fell Inc., v. Design Center of Los Angeles (1988) 204 Cal.App.3d

1406 (Feil). In late 1981, a commercial tenant agreed to rent real property from, and approved the lease proposed by, a landlord, but the lease did not contain an arbitration clause. However, the tenant did not execute the lease. In February 1982, the tenant decided to move into the space and requested a lease for execution. Unknown to the tenant, the landlord had changed its lease form and the new form contained an arbitration clause. The tenant signed the lease 'because [he] thought the second lease was the same as the first., (Id., at p. 1411.)

There was a disagreement and the tenant filed a complaint in the superior court. The landlord demanded that the dispute be submitted to arbitration. A hearing was held on the tenant's order to show cause why arbitration should not be stayed. On December 20, 1985, the superior court ruled in a minute order: "The arbitration clause 'may reasonably be construed to encompass the fraud clause' herein. See Ericksen ...'" (Feil, supra, 204 Cal.App.3d at p. 1412.) The appellate court did not have a reporter's transcript of these proceedings, but documents in the record 'made clear" that the superior court was being asked to restrain arbitration on the ground that the agreement was induced by fraud. A subsequent petition by the landlord to compel arbitration was granted by the same judge by a minute order dated January 28, 1986, "without further citation of authority." (Ibid .) The tenant sought review of the order by a petition to the appellate court for a writ. The petition was denied. (Ibid .)

The arbitrator heard evidence regarding the assertions of fraud and found that the tenant had breached the lease. No finding was made 'concerning fraud in the inducement of either the arbitration clause or any other provision of the lease, or of the lease generally.' The landlord filed a petition in the superior court to confirm the arbitration award, pursuant to Code of Civil Procedure section 1285. The tenant argued that he had been denied due process by the superior court and the arbitrator, because he had not been given the opportunity to litigate his claim of fraudulent inducement to execute the lease with the arbitration provision. The superior court ruled in favor of the tenant. (Feil, supra, 204 Cal.App.3d at pp. 1412-1413.)

The Court of Appeal reversed. It held that the superior court 'determined twice that [the tenant's] claims of fraud could be arbitrated;... a 'judicial determination' does not necessarily mean a trial on the merits; many issues of law and fact are determined by motion. [Judge] O'Brien's determinations were then reviewed on a writ taken to this court, and no error requiring the intervention of this court was found.' Moreover the record disclosed that the issue of fraud in the inducement was heard and decided by the arbitrator. (Feil, supra, 204 Cal.App.3d at pp. 1418-1419, emphasis in original.)

The factual and procedural setting of Feil is remarkably similar to the instant case. Accordingly, we conclude that as in Feil, the superior court and the arbitrators herein properly decided the issue of fraudulent inducement.

III. PERMEATION ISSUE

Appellant contends that the arbitration agreement should not have been enforced because fraud permeated the entire contract including the arbitration clause. This contention lacks merit.

It appears that the first California case to expound the 'permeation doctrine' was Main v. Merrill Lynch, Pierce, Fenner & Smith, (1977) 67 Cal.App.3d 19 (Main) which held that 'where it is alleged that fraud either induced the arbitration clause itself, or permeated the entire agreement including the arbitration clause, that issue will be determined judicially and not by arbitration.' (Id., at p. 27.) The allegations which sufficiently established permeation were that an aged conservator of the estate of an invalid husband, who was unschooled in business, placed complete confidence in a broker and, at his request, signed a contract giving him complete control of her financial affairs. The contract contained an arbitration clause which was in fine print on the reverse side of the document. (Id., at pp. 30-31.)

Ericksen, supra, 35 Cal.3d 312, 323, footnote 8, approved the permeation doctrine but held that it did not apply where the party claiming fraud was a law firm. Further, the law firm did not deny 'ever agreeing to anything' and was aware of the arbitration provision. The contract in question was a lease of real property.

Ford v. Shearson Lehman American Express Inc. (1986) 180 Cal.App.3d 1011, 1025-1027 (Ford), held that fraud

permeated a contract between a brokerage firm and a customer who signed the contract because he was told to do so by the psychotherapist business adviser that 'dominated' him. The contract enabled the business adviser to gain control of the customer's wealth and contained an arbitration clause.

Feil, supra, 204 Cal.App.3d at page 1417, approved the permeation doctrine but held there 'is nothing pervasive (i.e., 'permeating') about the asserted fraud in this situation' involving a dispute over a commercial lease. One factor relied on by the court was the absence of any evidence that the tenant would have changed his mind about entering into the lease if he knew about the arbitration provision.

The recent case of Strotz v. Dean Witter Reynolds, Inc. (1990) 223 Cal.App.3d 208 (review den.) (Strotz), involved a contract between a brokerage firm and a customer. After reviewing the above cases and precedents cited therein, the court rejected the permeation doctrine. (Id., at pp. 212217.) However, it approved the results in Main, supra, and Ford, supra, on the basis of an alternate theory applied in Ford. Therein, the plaintiff customer alleged that 'at the time he signed the agreements, he was under the complete domination and control of one of the defendants and that if he in fact signed the agreements he did not know what they were and did not know what their effect was.' Thus, 'the complaint sufficiently alleged fraud in the inception, factum or execution to render the agreement to arbitrate void for lack of mutual assent.' (Strotz, , 223 Cal.App.3d at p. 217.) Determination of whether such fraud exists is for a court and not an arbitrator. (Id. at pp. 217-218.)

In Strotz, supra, the alleged fraud was that the customer signed the contracts containing an arbitration clause because she was assured by her broker that the contracts simply were standard documents necessary to open her account, that they did not affect her legal rights, and that it was not necessary to read them. She further contended that if she were aware that the documents gave the broker the right to sell,her stock to cover losses and contained an arbitration clause, she would not have signed them. (Id., 223 Cal.App.3d at pp. 211, fn. 2, 218.) The court found sufficient allegations of fraud in the inception because the customer alleged

that the broker 'deceived her as to the nature and effect of the documents she was signing and that had she known the documents contained an agreement to arbitrate, she would not have signed the documents., (Id., at p. 218.)

The present case is more similar to Ericksen and Feil than to Main, Ford and Strotz. Appellant is not a helpless investor lost in the world of stocks and bonds who can be, and is, easily dominated as were the customers in Main, Ford, and Strotz. She is an experienced broker who had been employed by Merrill Lynch. Further, she was aware that the document was an 'Employment Agreement' as it was so labelled. She did not allege that she would have refused to sign if she knew it contained an arbitration clause. Neither does she allege that the absence of such a clause was something she bargained for with respondents. Rather, the circumstances under which she signed the August 20 contract seem almost identical with those under which the second lease was signed in Feil. In both cases, experienced, knowledgeable parties signed a contract under the mistaken belief that it merely repeated the terms to which they had earlier agreed.

In view of our decision, we find it unnecessary to discuss whether the permeation doctrine is a valid precept of law.

IV. DISPOSITION

The judgment is affirmed. Costs are awarded to respondents.

Anderson, P.J.

We concur:
Perley, J.
Reardon, J.

A046523
King v. Prudential-Bache Securities, Inc., et al.

Supreme Court, U.S.
FILED
JUL 26 1991
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NO. 91-11

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

ALISON KING,

Petitioner,

v.

PRUDENTIAL-BACHE SECURITIES, INC. et al.,

Respondents.

Petition for Writ of Certiorari to the
Supreme Court of California and
California Court of Appeal,
First District, Division Four

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PARENT/SUBSIDIARIES
OF
RESPONDENT PRUDENTIAL-BACHE SECURITIES INC.

PARENT ENTITIES

PRUDENTIAL SECURITIES GROUP, INC.
PRUDENTIAL CAPITAL AND INVESTMENT SERVICES, INC.
PRUCO, INC.
THE PRUDENTIAL INSURANCE COMPANY OF AMERICA

SUBSIDIARIES

BACHE & CO. (LEBANON) S.A.L.
BACHE & CO. S.A. de C.V. (MEXICO)
BACHE HALSEY STUART COMMODITIES S.A.
BACHE HALSEY STUART SHIELDS (ANTILLES) N.V.
BACHE INSURANCE AGENCY, INCORPORATED
BACHE INSURANCE OF ARIZONA INC.
BACHE INSURANCE OF KENTUCKY, INC.
BACHE SHIELDS SECURITIES CORPORATION
BANOM CORPORATION
GELFAND, QUINN & ASSOCIATES, INC.
MOROSTO NOMINEES INCORPORATED
P-B FUTURES MANAGEMENT INC.
PRUDENTIAL MUTUAL FUND MANAGEMENT, INC.
PRUDENTIAL MUTUAL FUND DISTRIBUTORS, INC.
PRUDENTIAL MUTUAL FUND SERVICES, INC.
P-B HOLDING JAPAN INC.
PRUDENTIAL SECURITIES (JAPAN) LIMITED

PRUDENTIAL-BACHE CAPITAL FUNDING PUERTO RICO INC.
PRUDENTIAL-BACHE FUTURES ASIA PACIFIC LTD.
PRUDENTIAL-BACHE SECURITIES ASIA PACIFIC, LTD.
PRUDENTIAL-BACHE SECURITIES (BELGIUM) INC.
PRUDENTIAL-BACHE SECURITIES (ESPANA), S.A.
PRUDENTIAL-BACHE SECURITIES (FRANCE) S.A.
PRUDENTIAL-BACHE SECURITIES (GREECE) S.A.
PRUDENTIAL-BACHE SECURITIES (HOLLAND) INC.
PRUDENTIAL-BACHE SECURITIES (HOLLAND) N.V.
PRUDENTIAL-BACHE SECURITIES (HONG KONG) LIMITED
PRUDENTIAL-BACHE FUTURES (HONG KONG) LIMITED
PRUDENTIAL-BACHE SECURITIES (ITALY) INC.
PRUDENTIAL-BACHE SECURITIES (LUXEMBOURG) INC.
PRUDENTIAL-BACHE SECURITIES (MONACO) INC.
PRUDENTIAL SECURITIES (SOUTH AMERICA) INCORPORATED
PRUDENTIAL SECURITIES (URUGUAY) S.A.
PRUDENTIAL SECURITIES (ARGENTINA) INCORPORATED
PRUDENTIAL-BACHE SECURITIES (SWITZERLAND) INC.
PRUDENTIAL-BACHE SECURITIES (U.K.) INC.
SHIELDS MODEL ROLAND COMPANY
SHIELDS MODEL ROLAND NOMINEES
SHIELDS MODEL ROLAND SECURITIES INCORPORATED
BACHE INSURANCE AGENCY OF MISSISSIPPI, LTD.*
BACHE INSURANCE AGENCY OF OKLAHOMA, INC.*
BACHE INSURANCE AGENCY OF TEXAS, INC.*

*CORPORATION OWNED BY EMPLOYEES OF PRUDENTIAL SECURITIES INCORPORATED

(PEM MISC 3751)

I.

INTRODUCTORY STATEMENT

This Brief in Opposition to Petition for Writ of Certiorari is filed on behalf of Prudential-Bache Securities Inc. ("Prudential-Bache"), Carrington Clark, Jr. and Eugene Stansbery (collectively referred to herein as "Respondents"). The Respondents were defendants and respondents in the proceedings below. This Brief is filed in opposition to the Petition filed by Alison King, plaintiff and appellant in the proceedings below.

Petitioner claims that she is a victim of eight (8) erroneous prior decisions by lower tribunals. Petitioner's unsubstantiated assertions that her claims were not subject to arbitration have been rejected three (3) times by the California Superior Court,

once by a Panel of New York Stock Exchange ("NYSE") Arbitrators, three (3) times by the California Court of Appeal and once by the California Supreme Court. Indeed, Petitioner's purported constitutional claims are merely a "smokescreen" to divert the Court's attention from her true motive -- to obtain a different factual determination than that made by all of the tribunals below.

Petitioner does not raise a federal question that was decided in any way that conflicts with a state court of last resort. Nor does Petitioner raise an important question of federal law that has not been, but should be, decided by this Court. In fact, the issues presented by Petitioner were decided below in complete accordance with federal and state law. Accordingly, the Petition should be denied in its entirety.

II.

STATEMENT OF THE CASE

A. Factual Background[1]

In July and August 1984, Petitioner and Prudential-Bache manager Eugene Stansbery engaged in discussions regarding possible employment by Prudential-Bache of Petitioner as a stockbroker. During those discussions, Petitioner represented that she had an excellent record at her prior place of employment, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"). Petitioner was hired on a provisional basis by Prudential-Bache, subject to the receipt of an acceptable U-5

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[1]The Petition is replete with misstatements of fact. Therefore, Respondents set out in some detail the background and procedural history of this matter. (Supreme Court Rule 15.1).

termination form from Merrill Lynch.[2] (Clerk's Transcript on Appeal lodged with the California Court of Appeal, First Appellate District ("C.T.") 312-316.)

Prudential-Bache did not receive a Form U-5 from Merrill Lynch which established that the Petitioner would be an acceptable employee; rather, in early September 1984, Prudential-Bache received a Merrill Lynch U-5 termination form for Petitioner which showed a myriad of legal problems. (C.T. 604-606.) The Form U-5 disclosed more than ten (10) customer complaints against Petitioner while she was in Merrill Lynch's office in Sunnyvale, California, including a U.S. District Court action alleging unauthorized trading and

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[2]A Form U-5 is a standardized form in the securities industry and must be completed by an employee's branch manager or supervisor whenever an employee resigns or is terminated. The Form U-5 must be filed with all of the exchanges with which that person is registered. NYSE Rule 345.1, 2 NYSE Guide (CCH) ¶ 2345.

fraud. (C.T. 606, 620-629.) The Form U-5 also disclosed that during the last few weeks of Petitioner's employment at Merrill Lynch, it became necessary to "bust" and adjust more than seventy (70) transactions in Petitioner's customers' accounts, creating additional losses to Merrill Lynch in the amount of $9,850.00. (C.T. 606.)

In addition to these facts, Respondents learned that Petitioner was the subject of at least two (2) customer complaints made while she was employed in Merrill Lynch's Buffalo, New York office. The complaints made against Petitioner included claims for unauthorized trading, fraud, misrepresentation, churning and other serious offenses. (C.T. 605-606, 620-629, 631, 633, 635-647.)

Petitioner's efforts to conceal the many claims which had been made against her by her clients were nothing short of incredible.

First, Petitioner agreed in writing that she would disclose in writing all "prior or existing customer complaints," but she failed to do so. (C.T. 612.)

Second, Petitioner executed a Form U-4 Employment Application in which she represented to Prudential-Bache that the reason she was leaving Merrill Lynch to join Prudential-Bache was for a "better opportunity." (C.T. 615.) This was clearly not the case as the U-5 termination form filed by Merrill Lynch indicates that Petitioner did not voluntarily resign, but instead was "released" by Merrill Lynch because of a "series of customer complaints." (C.T. 605.)

Finally, in completing the Form U-4 Employment Application, Petitioner certified to Prudential-Bache that she had never been the subject of a "major complaint or legal proceeding." (C.T.

616-617.) As noted above, Petitioner had in fact been the subject of numerous serious complaints, including the aforementioned U.S. District Court proceeding. (C.T. 604-606, 620-637.) Upon discovery of Petitioner's blatant misrepresentations regarding her employment record, Prudential-Bache terminated her provisional employment on September 14, 1984. (C.T. 312-316.)

B. Procedural History

On December 4, 1985, Petitioner filed an Amended Complaint alleging causes of action for wrongful termination and related claims against Respondents as well as Merrill Lynch and several Merrill Lynch employees. (C.T. 10.) Petitioner's Amended Complaint does not contain any constitutional claims. (Id.)

On January 24, 1986, Respondents filed a Petition to Compel Petitioner's claims to arbitration in the state proceedings. Respondents' Petition alleged that in conjunction with Petitioner's employment by Respondents, Petitioner executed an "Employment Agreement" and a Uniform Application for Securities Registration. Both documents contain valid, enforceable agreements to arbitrate any disputes between Petitioner and Respondents. (Petitioner's Appx., p. 4a.) On April 7, 1986, the Honorable Maxine Chesney of the California Superior Court granted Respondents' Petition to Compel Arbitration in accordance with the arbitration rules of the NYSE and stayed all judicial proceedings pending completion of the arbitration. (Petitioner's Appx., p. 5a.)

On August 25, 1987, Petitioner moved to dissolve or modify the stay of proceedings. In essence, Petitioner sought to have

Judge Chesney reconsider the granting of Respondents' Petition to Compel Arbitration and to Stay Proceedings. Indeed, Petitioner raised the same allegations of fraud in the inducement as she raised in opposition to the original Petition to Compel Arbitration. (Petitioner's Appx., p. 5a.) In support of her Motion to Reconsider, Petitioner argued that the arbitration agreements were not enforceable. This was the same argument that Judge Chesney had considered and previously rejected in granting Respondents' Petition to Compel Arbitration and to Stay Proceedings. Judge Chesney denied Petitioner's Motion to Dissolve or Modify the Order Staying Proceedings on October 21, 1986. (Id.)

Petitioner's quest to avoid NYSE arbitration continued. After receiving Judge Chesney's Order denying her Motion to Dissolve or Modify, Petitioner applied to the California Court of Appeal, First

Appellate District (Division Four) for a writ of certiorari and/or a writ of prohibition. The Petition was denied on December 17, 1986. (Id.)

On or about May 8, 1987, Petitioner finally filed a Statement of Claim with the NYSE, thereby initiating arbitration proceedings against Respondents. Petitioner's Statement of Claim specifically requested that:

> The arbitrators rule on the arbitrability of each of her claims and upon their authority to order each item of relief requested above.

Therefore, Petitioner expressly placed before the arbitrators the issue of whether the arbitration agreements were valid. (Petitioner's Appx., p. 5a.)

On October 18, 19 and 20, 1988, Petitioner's claims against Respondents were arbitrated before a four-person arbitration panel in the forum provided by the NYSE. At the close of the arbitration hearing, Petitioner's counsel was asked if Petitioner had a full and fair opportunity to present her case. Petitioner's counsel, on behalf of Petitioner, stated that she did have a full and fair opportunity to present her claims. (Id.)[3] After taking the matter under submission, the arbitrators rendered a decision dismissing Petitioner's claims in all respects. Costs in the amount of $4,500 were assessed against Prudential-Bache. (Petitioner's Appx. pp. 5a-6a.) Thus, Petitioner's argument that the arbitration agreements were not enforceable was rejected for a fourth time.

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[3]At the hearing, Petitioner submitted approximately forty-five (45) exhibits in support of her claims against Respondents. Petitioner, who was represented by able counsel, testified at length and called other witnesses on her behalf.

On January 27, 1989, Petitioner filed in the California Superior Court a Petition to Correct and Confirm the Arbitration Award.[4] Respondents filed a Petition to Confirm the Arbitrators' Award on February 15, 1989. Petitioner filed Declarations repeating the above-stated allegations of fraud in the inducement.

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[4]Petitioner claims that she did not file a Petition to Vacate the arbitrators' award because of her erroneous belief that the arbitrators "meant" to say that her claims were dismissed since they had no jurisdiction to rule on the matter. Indeed, without citing any basis for her incredible assertion, Petitioner declared under penalty of perjury that:

> I [Petitioner] interpreted this award to be one in my favor and the language of dismissal to be consistent with a finding of non-arbitrability and timely petitioned the court to modify the award to correctly reflect the finding of non-arbitrability, the only basis on which the award could stand without implicating arbitrator misconduct, and to conform the award as corrected. (C.T. 706-707.)

Not surprisingly, the Honorable Stuart Pollak of the California Superior Court granted Respondents' Petition to Confirm the Arbitrators' Award and denied Petitioner's Petition to Correct and Confirm. (Petitioner's Appx., p. 6a.) Judge Pollak held that Petitioner's claims of fraud in the inducement were previously rejected by Judge Chesney and that, even if the fraud in the inducement argument had not already been decided, there was no credible evidence of fraud in the inducement of the arbitration clause contained in the agreements executed by Petitioner. (Id.) Judgment on the Arbitrators' Award was entered in favor of Respondents and against Petitioner on May 3, 1989. (Id.)

On June 19, 1989, Petitioner filed a Notice of Appeal. The California Court of Appeal rendered its decision affirming the judgment of the Superior Court against Petitioner on December 11,

1990. The Court of Appeal also awarded Respondents their costs on appeal. (Petitioner's Appx. p. 10a.) Petitioner filed a Petition for Rehearing on January 4, 1991. The Court of Appeal denied the Petition for Rehearing on January 10, 1991. (Petitioner's Appx. p. 2a.) In addition to denying the Petition for Rehearing, the Court of Appeal ordered that its Decision be certified for publication.[5] (Id.)

Petitioner then filed a Petition for Review to the California Supreme Court on January 20, 1991. The California Supreme Court, in bank, denied the Petition for Review on March 29, 1991. (Petitioner's Appx., p. 1a.). Thus, eight (8) tribunals have considered and rejected Petitioner's claims herein. The instant Petition followed.

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[5]The published decision is cited as King v. Prudential-Bache Securities, Inc., et al., 226 Cal.App.3d 749, 277 Cal.Rptr. 214 (1990).

III.

SUMMARY OF ARGUMENT

The arguments set forth below can be summarized as follows:

(A) Because Petitioner's Appeal To This Court Does Not Satisfy Any Of The Criteria Set Forth In Supreme Court Rule 10, The Petition Should Be Denied In Its Entirety.

(B) The Court Of Appeal's Decision Correctly Applied California Law.

(C) The Court Of Appeal's Decision Is In Accordance With Controlling Federal Law.

(D) Petitioner Was Not Entitled To A Jury Trial Under Either State Or Federal Law.

(E) The Arbitration Agreements Clearly Encompass Petitioner's Claims.

IV.

ARGUMENT

A. Because Petitioner's Appeal To This Court Does Not Satisfy The Criteria Set Forth In Supreme Court Rule 10, The Petition Should Be Denied In Its Entirety

The granting of certiorari is discretionary and is only granted where there are special and important reasons for granting review. Supreme Court Rule 10. The questions presented by Petitioner do not meet any of the criteria set forth in Rule 10.

First, because this Petition arises from the decision of a state court, the questions presented by Petitioner do not involve a conflict in the decisional law of the federal Courts of Appeals. Second, the California Court of Appeal did not decide a federal question in a

way that conflicts with a state court of last resort. Third, the Court of Appeal did not depart from "the accepted and usual course of judicial proceedings." Fourth, the Court of Appeal did not decide a question of federal law which has not been settled or which conflicts with the earlier decisions of this Court. Finally, it is apparent that there are no special reasons of significant public importance for granting the Petition in this case.

Glaringly absent from Petitioner's Brief is an explanation as to why her Petition raises issues that meet the Rule 10 criteria. Petitioner does not raise a constitutional issue inasmuch as the California Court of Appeal's decision is entirely consistent with federal law and especially the recent Supreme Court holdings expressing the strong public policy in favor of arbitration. Indeed, Petitioner impermissibly seeks to have this Court review the undisputed findings

of fact of the judicial and arbitration forums below. Accordingly, the Petition should be denied in its entirety.

B. The Court of Appeal's Decision Correctly Applied California Law

The California Court of Appeal's decision that Petitioner was not entitled to a jury trial on the issue of fraudulent inducement was entirely in conformity with California law. The Court of Appeal held that the California Supreme Court's ruling in Ericksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak Street, 35 Cal.3d 312, 323, 673 P.2d 251, 197 Cal.Rptr. 581 (1983), required that Petitioner's claims be decided by the arbitrator, not by a court, because her claims for fraud in the inducement went to the contract containing the arbitration clause, as distinguished from fraud directed to the arbitration clause itself. (Petitioner's Appx., pp. 6a-8a.)

The Court of Appeal further held that that the Ericksen rule was applicable to Petitioner because of the factual and procedural similarities to Herman Feil, Inc. v. Design Center of Los Angeles, 204 Cal.App.3d 1406, 251 Cal.Rptr. 895 (1988). (Id.) The Court of Appeal properly concluded that, as in Feil, "the superior court and the arbitrators herein properly decided the issue of fraudulent inducement." (Id.)

Inasmuch as the Court of Appeal found Petitioner's claims distinguishable, it was not required to apply the holdings from Strotz v. Dean Witter Reynolds, Inc., 223 Cal.App.3d 208, 272 Cal.Rptr. 680 (1990), Ford v. Shearson Lehman/American Express, Inc., 180 Cal.App.3d 1011, 225 Cal.Rptr. 895 (1986), or Main v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 67 Cal.App.3d 19, 136 Cal.Rptr. 378 (1977). The Court of Appeal correctly held:

> The present case is more similar to Ericksen and Feil than to Main, Ford and Strotz. [Petitioner] is not a helpless investor lost in the world of stocks and bonds who can be, and is, easily dominated as were the customers in Main, Ford, and Strotz. She is an experienced broker who had been employed by Merrill Lynch. Further, she was aware that the document was an "employment agreement" as it is so labeled. She did not allege that she would have refused to sign if she knew that it contained an arbitration clause. Neither does she allege that the absence of such a clause was something she bargained for with Respondents. Rather, the circumstances under which she signed the August 20 contract seem almost identical under which the second lease was signed in Feil. In both cases, experienced knowledgeable parties signed a contract under the mistaken belief that it merely repeated the terms to which they had earlier agreed.

(Petitioner's Appx., p. 10a.)

Thus, the Court of Appeal's decision was based upon undisputed material facts established in the record and does not raise any issues that are contrary to California law. The Court of Appeal merely found that the holdings in Ericksen and Feil were controlling, and that those in Main, Ford and Strotz were not. Accordingly, the Petition should be denied in its entirety.

C. The Court Of Appeal's Decision Is In Accordance With Controlling Federal Law

It is well-settled that federal law governs all questions concerning the validity, revocability, enforceability and interpretation of arbitration clauses that come within the scope of the Federal Arbitration Act. Southland Corp. v. Keating, 465 U.S. 1, 10-11, 16 (1984); Thorup v. Dean Witter Reynolds, Inc., 180 Cal.App.3d 228, 233, 225 Cal.Rptr. 521 (1986). It is equally well-established that an employment

contract between a brokerage firm and a registered representative, such as Petitioner, involves "commerce" and, therefore, an arbitration agreement in such contract comes within the purview of the Federal Arbitration Act. 9 U.S.C. §§ 2, et seq.; Thorup at 233; Tonetti v. Shirley, 173 Cal.App.3d 1144, 1148-49, 219 Cal.Rptr. 616 (1985).

The Court of Appeal's decision that Petitioner was not entitled to a jury trial on the fraudulent inducement issue is in accordance with federal law. This Court in Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 403-404 (1967), settled the issue raised by Petitioner when it held that any claims of fraud in the inducement of the contract generally must, in the first instance, be determined by the arbitrators. Only where the alleged fraud is directly related to the making of the agreement to arbitrate may the Court (as opposed to the arbitrators) proceed to adjudicate the fraud in the

inducement issue. Id. at 404.

Petitioner asserts that her entire employment agreement was procured by fraud. Petitioner does not, however, claim that the alleged fraud went directly to the making of the agreement to arbitrate. (Petitioner's Appx., p. 10a.) Therefore, the California Court of Appeal's decision (on three separate occasions) that the Superior Court and the Arbitrators properly decided the issue of fraudulent inducement was in accordance with controlling federal law. See, Prima Paint, 388 U.S. at 403-04.

Petitioner's reliance on Moseley v. Electronic Facilities, 374 U.S. 167 (1963) is misplaced. Not surprisingly, Petitioner does not provide any explanation why Moseley supports her position. In Moseley, the Court held that the fraudulent inducement went to the

arbitration clause itself and therefore had to first be addressed by the district court prior to compelling arbitration. Moseley, 374 U.S. at 171. Moseley is entirely consistent with this Court's subsequent ruling in Prima Paint that the issue of fraudulent inducement, where the fraud goes to the contract as a whole, must be decided in the first instance by the arbitrators. Prima Paint, 388 U.S. at 403-04. In addition, the Superior Court considered and decided the fraudulent inducement issue two times before the matter proceeded to arbitration. Accordingly, the Petition should be denied in its entirety.

D. Petitioner Is Not Entitled To A Jury Trial Under State Or Federal Law

The Court of Appeal correctly held that Petitioner was not entitled to a jury trial on the enforceability of the agreements to arbitrate. Under California law, Petitioner was not entitled to a jury

trial on her claims of fraudulent inducement. See, Ericksen at 323; Feil at 1418-19.[6] Federal law is in accord that where a stockbroker has entered into an agreement to arbitrate any dispute with a former or present employer, the stockbroker has no right to a jury trial on the issue of arbitrability. Smiga v. Dean Witter Reynolds, Inc., 766 F.2d 698, 706 (2d Cir. 1985) cert. den., 475 U.S. 1067 (1986).

In addition, inasmuch as Petitioner's claims of fraudulent inducement do not go to the arbitration clause itself, the issue of arbitrability was one for the arbitrators to decide in the first instance.

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[6]Petitioner apparently claims that she has "federal constitutional rights to trial by jury." (Petitioner's Brief, pp. i and 17.) To the extent Petitioner is claiming a federal right to trial by jury of her state law claims, Respondents would note that the Seventh Amendment does not apply to state court proceedings. Minn. & St. Louis R.R. v. Bombolis, 241 U.S. 211, 217 (1916). Thus, a refusal of a jury trial in state court proceedings is not a denial of either due process or equal protection. Letendre v. Fugate, 701 F.2d 1093, 1094 (4th Cir. 1983); Olesen Trust Co. of Chicago, 245 F.2d 522, 524 (7th Cir. 1957).

See, Prima Paint, 388 U.S. at 403-404. Accordingly, the Petition should be denied in its entirety.

E. The Arbitration Agreements Clearly Encompass Petitioner's Claims

Petitioner erroneously argues that the California Court of Appeal has enlarged the scope of the arbitration clause in the employment agreement that she voluntarily entered into. Petitioner did not make this argument before the Superior Court, the arbitrators, or the California Court of Appeal. Accordingly, the argument is neither timely nor properly raised herein. The employment agreement signed by Petitioner which contains an agreement to arbitrate has been found, no fewer than seven times, to be valid and enforceable. Moreover, Petitioner ignores the well-settled precedent that agreements to arbitrate are to be broadly construed. See, Moses H. Cone Memorial Hospital

v. Mercury Construction Corp., 460 U.S. 1 (1983).

The arbitration agreements at issue herein apply to any disputes arising out of Petitioner's employment. However, even if the arbitration agreements do not encompass Petitioner's claims, there is a separate and independent basis for compelling arbitration. Petitioner does not address the fact that NYSE Rule 347 requires her, as a registered representative, to arbitrate any claims she may have against a member organization such as Prudential-Bache. See, NYSE Rule 347, 2 NYSE Guide (CCH) ¶ 2347; Gilmer v. Interstate/Johnson Lane Corporation, ___ U.S. ___, 111 S.Ct. 1647, 1651 (1991); Muh v. Newberger, Loeb & Co., Inc., 540 F.2d 970, 972-73 (9th Cir. 1976); Hall v. Nomura Securities International, 219 Cal.App.3d 43, 268 Cal.Rptr. 45 (1990).

V.

CONCLUSION

For all of the reasons stated herein, the Petition should be denied in its entirety.

Respectfully submitted,

/S/

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(3)

No. 91-11

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1991

ALISON KING,
Petitioner
v.
PRUDENTIAL-BACHE SECURITIES, INC., *et al.*,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA AND CALIFORNIA COURT OF APPEAL, FIRST DISTRICT, DIVISION FOUR

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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PETITIONER'S REPLY TO BRIEF IN OPPOSITION

RESPONDENTS' FACTUAL AND LEGAL ARGUMENTS WERE DELIBERATELY FALSE AND MISLEADING:
In their Brief in Opposition No. 91-11 (hereinafter "BIO"; BIO page reference corresponds to "fresh" copies that Respondents lately submitted to conform to S.Ct. Rule No.33), none of the arguments by Respondents ("PRUDENTIAL" et al.), upon scrutiny, support their position.

For instance, unlike in *Gilmer v. Interstate/Johnson Lane Corporation*, 500 U.S.___-, 111 L.Ed.2d 26, 111 S.Ct. 1647 (1991), the invalid arbitration clause in the bogus August document that was wrongfully imposed on Petitioner Alison KING ("KING") was the product of coercion and fraud and indeed was never a part of the July contract KING sued on. [Clerk's Transcript on Appeal (hereinafter "C.T.", on file and docketed in the California Court of Appeal, First Appellate District, Division Four) 721-722]. Additionally, unlike Gilmer, KING absolutely did not agree, as proven by her Form U-4 security registration application, to arbitrate her claims. [C.T. 614-618].

In her U-4 Form at page 4 [C.T. 617], the proposed arbitration clause recites: "I agree to arbitrate any dispute... that is required to be arbitrated under the rules, constitutions, and by-laws of the organization with which I register, as indicated in Question 8." Question 8, however, was left blank by both KING and PRUDENTIAL [C.T. 614]. Therefore, on its face the Form U-4, signed by both KING and PRUDENTIAL, clearly did not require KING to arbitrate any of her claims because both she and PRUDENTIAL, by their mutual signatures on said Form U-4, expressly did not agree to do so.

NYSE Rule 347 was also inapplicable because KING had been terminated and de-registered by her former employer Merrill Lynch ("MERRILL") through Form U-5 on August 16, 1984, and by the aforesaid new Form U-4 registration application on August 20, 1984, signed by both herself and PRUDENTIAL, the parties unequivocally and explicitly rejected any arbitration before any of the exchanges by specifically leaving Question 8 blank. [C.T. 614].

Likewise, PRUDENTIAL and counsel's other numerous false, sweeping assertions as well as their other specious arguments are without merit and have already been fully disproved and refuted in KING's Petition.

PRUDENTIAL AND COUNSEL HAVE RESORTED TO GROSS MISREPRESENTATIONS AND OUTRIGHT FABRICATIONS:

In their Brief in Opposition No. 91-11 ("BIO"), PRUDENTIAL and counsel strived to mislead this honorable Court and unfairly prejudice KING by making numerous willful misstatements, misrepresentations, and outright fabrications as will be proven below. As a diversionary "smokescreen", Respondents and counsel further callously turned the situation upside down and maliciously accused the innocent KING of misstatements which only they themselves were freely and knowingly engaged in before this honorable Court [BIO 3, footnote], as will be proven below.

PRUDENTIAL and counsel's audacious reverse accusation is a desperate bid to prevent, by any means and at all costs, the exhumation of a gross miscarriage of justice in this case. It is particularly deplorable that PRUDENTIAL and its counsel have attached no practical significance to the fact that this time their lies and fraud are being perpetrated on none other than the Supreme Court of the United States.

The resulting damage of such unethical and unscrupulous conduct, if condoned or allowed to succeed, can only be enormous and far reaching.

When PRUDENTIAL and its counsel chose to engage in deceptive advocacy before this honorable Court, it is practically impossible for Petitioner KING at this stage to expose more than a tip of the iceberg of their misconduct and deceit. Having fraudulently kept KING from a jury trial and a trial on the important preliminary issue of fraud, PRUDENTIAL and its counsel, gambling on continued impunity, now further endeavor to paint a totally false picture here to mislead this honorable Court, as proven below.

PRUDENTIAL MISREPRESENTATION: EXAMPLE #1:
Although the detailed employment contract between PRUDENTIAL and KING [C.T. 250-251] were memorialized and reduced to writing on July 20, 1984, PRUDENTIAL and counsel now misrepresent to this honorable Court that only "possible employment" [BIO. 3] was being discussed, in July and August 1984.

PRUDENTIAL MISREPRESENTATION: EXAMPLE #2:
PRUDENTIAL and counsel further misrepresent that KING's employment was "provisional" [BIO 3] when in fact such was not the case. Indeed, neither the valid July contract [C.T. 250-251] nor the bogus August document [C.T. 213-219] in any way hinted a "provisional" nature of KING's employment. In fact, if one were to accept counsel and PRUDENTIAL's false representation that in July and August 1984, only "discussions regarding possible employment" [BIO 3] were made then such mere discussions on possibility of employment certainly would not have led to the definitive and detailed July contracts given to both KING and her co-worker Wallace Lin ("LIN") [C.T. 250-253].

Moreover, it is undisputed that PRUDENTIAL never performed any of the terms in the bogus August documents precisely because they were sham and invalid but performed accordingly to the July contract precisely because it was the only valid contract, as proven by conduct in their dealings with LIN. Their deceptive efforts to enlist the Court on their side to justify their fraud against KING and their bad faith breach of KING's valid July contract and to further perpetrate and enlarge an already gross injustice on a powerless minority and female such as KING, who has been gravely injured and aggrieved by their fraudulent conduct since 1984, must not be allowed to succeed if the notion of equal justice under law is to be meaningful in practice.

PRUDENTIAL MISREPRESENTATION: EXAMPLE #3:
The alibi PRUDENTIAL and counsel now present to this honorable Court as to the underlying reasons for PRUDENTIAL's purported actions [BIO 3-7] against KING is the latest of a series of self-contradictory, false and fraudulent "trial alibis" that PRUDENTIAL and its counsel have been fabricating in order to test out a version that better accomplishes the objective of deception and cover-up. For instance, KING has in her possession false, fraudulent and self-contradictory letters from PRUDENTIAL's counsel denying ever hiring KING on the one hand and admitting that KING was hired on the other.

MERRILL LYNCH ORCHESTRATED CUSTOMER COMPLAINTS TO RETALIATE AGAINST KING'S JOB SWITCH TO PRUDENTIAL:
KING was employed as a stock broker at MERRILL prior to recruitment by PRUDENTIAL [C.T. 372]. From 1981 to 1984, in just a short period of three years, her contribution to MERRILL's revenues and profits became so large (about $400,000/year and growing) that a new office in Sunnyvale, California, was specially designed and built in early 1984 by MERRILL, specifically to feature her as the profit center.

Thus when MERRILL discovered that PRUDENTIAL had recruited KING, it was a devastating economic blow to MERRILL's new Sunnyvale office, as KING's departure would result in a sharp drop of revenues in said office as to require it to close, which it soon did. MERRILL therefore decided to punish and retaliate against KING for going to PRUDENTIAL.

KING had every interest to make her job transition from MERRILL to PRUDENTIAL, at the end of her exemplary 3-year employment at MERRILL during which she was rapidly promoted and finally attained the position of Vice President, as smooth and uneventful as possible, having already secured an employment contract with PRUDENTIAL [C.T. 250-251].

MERRILL would not permit this but retaliated instead by instigating a sudden outbreak of customer complaints against KING just before KING's expected uneventful departure to join PRUDENTIAL [C.T. 604-606]. To instigate KING's customers to fraudulently disavow losing trades, MERRILL enticed them with promises of reimbursements which were then unilaterally deducted from KING's commission without her prior knowledge or consent, and at her expense. This fact was deliberately suppressed by MERRILL in Form U-5 [C.T. 604-606].

<u>PRUDENTIAL WAS FULLY AWARE OF MERRILL'S RETALIATION AGAINST KING:</u>

PRUDENTIAL was not only aware of but in fact anticipated such retaliation from MERRILL, when it brought out the issue of probable suit by MERRILL as the reason for the confidentiality clause in KING's July contract [C.T. 251, para.10] and the need for the bogus August document entitled "Employment Agreement" which KING and her co-worker LIN were both hurried into signing on August 20, 1984 [C.T. 254-262].

KING FULLY INFORMED PRUDENTIAL AND FAITHFULLY FOLLOWED ITS INSTRUCTIONS:

PRUDENTIAL was fully informed and aware of MERRILL's tactics against KING and advised KING to vigorously complain to MERRILL's top management which KING did. The Form U-4 [C.T. 614-618] was actually the joint effort of KING and PRUDENTIAL's manager Gene Stansbery ("STANSBERY"), who provided KING guidance, direction and counsel and who advised KING to use "better opportunity" as the answer for joining PRUDENTIAL rather than the fact that KING would not acquiesce to MERRILL's secret and illegal overcharging of margin interest in public customer's accounts and MERRILL's other unlawful corporate practices (which remained uncorrected to this day, to the continued detriment of the public). The entire U-4 Form was then typed up by Stansbery's secretary, Suzie, for KING's signature. It is now clear that even as STANSBERY was counseling KING, PRUDENTIAL was premeditating for an alibi for the subsequent contract breach, mistreatment and defrauding of KING [BIO 6].

PRUDENTIAL MISREPRESENTATION: OTHER EXAMPLES:

Additional evidence that PRUDENTIAL and counsel are presenting misstatements to this honorable Court in bad faith comprise of documents in KING's possession and originating from PRUDENTIAL, proving that KING had fully informed PRUDENTIAL of her termination by MERRILL and that PRUDENTIAL, additionally and independently, knew of KING's release from MERRILL, on and prior to August 20, 1984.

Indeed, one needs look no further than the aforesaid joint-effort U-4 Form, signed by both KING and PRUDENTIAL, which clearly alleged that KING was "discharged, ... for cause" [C.T. 616] Thus, when PRUDENTIAL and counsel falsely accused KING of concealment [BIO 5], they

knowingly did so in order to continue to carry out their callous tactic of selectively presenting to the U.S. Supreme Court diametrically untrue and totally misleading information, hoping thereby to create prejudice against an innocent KING.

PRUDENTIAL MISREPRESENTATION: MORE EXAMPLES:

PRUDENTIAL and its counsel also seized upon the "No" answer to the Form U-4 question which asked whether KING was (on August 20, 1984) "the subject of any investigation or proceeding ... by any securities, commodities or banking agency or jurisdiction, any national securities exchange, registered securities association or clearing agency or by any other agency or jurisdiction?" [C.T. 616] to again create a false picture for this honorable Court that KING had misrepresented [BIO 6-7] and to fabricate yet another false alibi for their egregious conduct against KING. In fact, on August 20, 1984, the date the Form U-4 was signed [C.T. 616], KING was indeed not the subject of any such investigation or proceeding.

PRUDENTIAL MISREPRESENTATION: FURTHER EXAMPLES:

As for the U.S. District Court proceeding [C.T. 620-629], the alleged complaint was dated August 27, 1984 and presumably filed even later. In fact KING did not learn of its existence until months later (she never was personally served) and certainly could not have concealed such a future event on August 20, 1984 before it even came into existence. Thus PRUDENTIAL and counsel's deliberate fabrication and false alibi to this honorable Court that on September 14, 1984, KING was terminated by PRUDENTIAL of her "provisional employment" due to her "blatant misrepresentation" [BIO 7] in executing the U-4 Form made on August 20, 1984 are glaringly bad faith misrepresentations that are directly disproved and refuted by

their own evidence as well as other conclusive evidence on record below [C.T. 616, 620-629].

Regrettably, such blatant falsehood hardly deterred PRUDENTIAL and its counsel from presentment to this honorable Court so as to deliberately mislead and deceive this honorable Court and to further falsely prejudice KING, in a bid to win by any means. It may be mentioned in passing that said District Court complaint was instigated, and the alleged losses and misconduct were in fact attributable solely to misconduct and mismanagement by other MERRILL's brokers in Buffalo, New York, particularly as KING had long since relocated to Sunnyvale, California [C.T. 615].

KING DID NOT RECEIVE A FAIR OPPORTUNITY TO VINDICATE HER RIGHTS AND CLAIMS:

With regards to the New York Stock Exchange ("NYSE") arbitration held in October, 1988, KING's counsel's response to the question from Chairperson as to whether he was satisfied that KING had a fair and full opportunity to present her case was: "Yes. We have, I believe, presented the evidence that we reasonably have available to us." [Arbitration transcript, p.546] His vigorous opposition to arbitration and his demand that the issue of arbitrability be a preliminary special verdict showed by unequivocal conduct that he did not consider the forum fair. It was neither time nor place, of course, for him to antagonize the arbitrators with a blunt answer. Thus his answer was not dispositive as to whether KING had a fair opportunity, as KING was compelled to go to arbitration against her will and Constitutional rights.

Moreover, as proved earlier, KING explicitly never agreed to arbitrate her claims against PRUDENTIAL before any exchange. NYSE was therefore without jurisdiction to arbitrate KING's claims. Such jurisdictional defect is

fundamental, never waived, and may be raised anytime, any place, so long as the defect exists

THERE WAS MISCONDUCT, AND CORRUPTION, BOTH PROCEDURAL AND SUBSTANTIVE, IN THE NYSE ARBITRATION:

Investigation into KING's NYSE arbitration reveals that one of the four arbitrators was a close friend of the First Vice President of MERRILL who was instrumental in and who led MERRILL's retaliatory campaign against KING. All four arbitrators were also closely acquainted with the NYSE Director of Arbitration who empaneled them. One of the four arbitrators was also a Director on the Board of a prominent fellow NYSE member firm friendly to PRUDENTIAL.

Moreover, the deliberation process was abruptly cut short to just three minutes even before it had gotten anywhere because one of the panel members who decided to be conscientious and sought to begin reviewing his extensive notes item by item was immediately overpowered from doing so, particularly by one planted dominant member whose agenda it was to ensure a pre-determined outcome. Instead, said notes and papers were promptly and immediately torn, thereby forcibly and abruptly ending the farcical "deliberation" and relegating the award and decision to the NYSE Director of Arbitration and NYSE Arbitration Department.

PRUDENTIAL AND COUNSEL'S MISCONDUCT IS A GRAVE AFFRONT TO THE HIGH COURT:

The dignity of the United States Supreme Court is simply too supreme and important to be subject to the risk, much less actual repeated conduct as exposed here, of ruthless and unscrupulous misrepresentation from PRUDENTIAL and its counsel. If PRUDENTIAL and its counsel are willing to stoop to such lows even before the United States Supreme

Court in order to win by any means, one needs only imagine what they had done to KING at the lower courts.

PETITIONER SEEKS NOTHING MORE THAN BASIC JUSTICE AND FAIR PLAY:

Petitioner KING, a female and minority, powerless against and impoverished by PRUDENTIAL and its mighty allies since 1984, asks for nothing more than basic justice and fair play that any ordinary American citizen would expect of, and quest for in, our courts. KING has not asked for specific sanctions against the wanton misconduct and deception of PRUDENTIAL and its counsel that have been glaringly and repeatedly perpetrated on and before this highest and most honorable Court of this land because she believes that this honorable Court is wise enough to recognize such persistent wanton misconduct for what it is, and apply all appropriate remedies as the interest of justice and the dignity of this honorable Court would require.

Petition should be granted.

Respectfully submitted,

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